

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
MARCH 7, 2019

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: Michael Timmons, Chair, William McFarland, and Michael Graham

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, and Miles Greenleaf

**1. Call the Meeting to Order and Introductions:** Michael Timmons, Chair

**2. Review and Approval of Minutes**

Commissioner McFarland made a motion to approve the minutes of December 13, 2018 as printed.

Commissioner Graham seconded. Vote 3-0.

Commissioner McFarland made a motion to approve the minutes of January 31, 2019 as printed.

Commissioner Graham seconded. Vote 3-0.

**Review and Approval of Decision and Orders**

None.

**3. Department Request for Commission Authorization to Expend Funds on Marketing for the 2019 Race Season.**

The Commission authorized the Department to expend marketing funds during the 2017 and 2018 racing seasons. There is optimism that the recent marketing efforts are beginning to pay dividends. Maine's wagering handle was up in 2018 for the first time since 2004, and there was evidence that new fans have begun to show up at the track. The Department will present a proposed budget for marketing in 2019 that seeks to increase marketing expenditures in an effort to build on the progress made to date and grow the industry. Commissioner Timmons turned the meeting over to Mr. Jennings. Mr. Jennings stated that the Commissioners should all have a memo that he sent out regarding the marketing that they did in 2018 and the MSBOA did a lot of marketing last year that was useful for the entire industry because they did were trying to spend down some carryover money. There was a lot of additional marketing that doesn't show up on this because this was just what the department essentially worked on. They are trying to ramp up the marketing. We do see some results from marketing. The handle was up 2.6% last year and they had some really big days. The Sire Stakes finals had a really good crowd despite the rainy day and there were some other big days. The family fun day and some of the triple crown days were fairly big. They have a contract with Atlantic to essentially run the program. The second page is a table looking at the proposed advertising for 2018, and if you look at the bottom the total says \$90,000 but what he is asking for from the Commission today is an initial authorization to expend up to \$60,000 in advertising because he now needs to engage with the MSBOA because they have up to 5% of their money to spend for promotion. The MSBOA would like to have the consultant who's an expert in marketing take over the advertising part of their promotion, and then they would probably want to spend some money on other things that are more internal to what they do. That is the request is authorization to spend up to \$60,000 in advertising, and he thinks given the climate on and the feedback that he's gotten from the VLA Committee that they need to be able to demonstrate to them that they're being aggressive about trying to move the industry forward and trying to do a little more for themselves. He had conversation with the MHHA about what they feel comfortable about spending on advertising, and if you look at where he has to do an administrative assessment to supplement the income that they get from other sources then the MHHA essentially the horsemen take the biggest hit they've got 10 percent at stake versus some of the other entities that have either 3 or 1 percent. In any case he believes he has the support of the MHHA to spend the money in advertising and that is essentially the question before you. Commissioner Timmons asked Ms. Patterson if she had any comments she wanted to make. Ms.

Patterson stated that MHHA is really impressed with what Mr. Jennings did last year. They definitely saw an improvement. It was nice to see you put a post out and you boost it and people actually show up to your event, so what they are doing is definitely working and they would like to continue doing that. Commissioner McFarland stated that he certainly believes after attending LD 715 that Mr. Jennings presentation was very well received and very informative and he thinks that's something the VLA should have heard and did hear; and he thinks it's a plus that the fact the handle was up a little bit. Now we're going to move forward in an increasing manner. He thanked Mr. Jennings for his efforts yesterday and also this endeavor with the two main parties being the MSBOA and the MHHA. Commissioner Timmons asked a question of Mr. Jennings. He said initially it would be \$60,000. When we vote on this are we voting on the \$90,000. Mr. Jennings stated he thinks they are voting on the \$60,000. The only question mark is the MSBOA what they are going to feel comfortable in terms of how much they want to put towards advertising and because of their schedule. That is something he has to work out. If they decide they don't want to spend any money on advertising then he would come back and ask you a second time for additional money. He might be more incline to cut the budget, but all he is saying is they are in good shape if they approve \$60,000 at this point. Commissioner Timmons stated to Mr. Jennings that he said he has already contracted with Atlantic and approximately what would their fee be to do everything you've asked them. Mr. Jennings stated they charge \$4,000 a month to do everything. One of the problems you have in state government is what he has to have 8 contracts to cover one event and the amount of time that goes in to getting all those contracts done is enormous. They had a contract with Spectrum last year and they wanted him to sign their contract. The State of Maine does not sign another vendors contract. The State of Maine has a standard contract that protects the state from harm if you will. Part of what happens here is he is able to shift all that burden to the contractor because he signs the contract and pays the bills, and then he sends them an invoice and shows all of the line items. It's a lot of money but he writes all of the post and he gets all of the information that you need for the post. The interesting part is the only other company that bid on the contract which was also a very reputable marketing company bid the exact same amount. Commissioner Timmons asked for any comments about what Mr. Jennings said about advertising. Commissioner McFarland asked how many months. Mr. Jennings stated it's for the entire year. Commissioner Timmons asked for a motion. Commissioner Graham made a motion that they authorize the department to spend up to \$60,000 from their operating budget for advertising. Commissioner McFarland seconded. Vote 3-0.

#### **4. Other Business**

Ms. Patterson stated that she would like to get some clarification. Last time she came her board asked her to ask about qualifying similar to what they did last year. If you raced within 45 days of the last race day of this season you broke it down by the date you have to race by or you have to qualify. She came forward and asked about that and Commissioner Graham made a comment about if you had raced at Scarborough. Since then some horsemen have reached out to her to try to get a little bit better clarification because they had raced at Bangor and they'd actually raced within that 45-day period of the last day of the race season. They were curious as if they went to Scarborough to race like opening day if they would have to qualify because their last race day wasn't at Scarborough it was at Bangor. They have also had some folks that had trucked out of state this winter to race and they are wondering if they have to qualify. She would like to put something out on their Facebook page for the horsemen. Commissioner Timmons stated there was some conflict in what happened and how do we clear that up. Ms. Patterson counted back and she believes the last day of racing last year was December 9<sup>th</sup> at Scarborough, and she counted back 45 days from that day which would be October 26 which does include part of the fall meet at Bangor. She's just asking for some clarification if those horsemen that raced in Bangor or even those horsemen that raced out of state, how you would like to proceed. Commissioner Timmons stated that possibly they made it more complicated than it needs to be. Commissioner Graham stated can they change it by saying anybody that raced on October 26 or since is qualified for the 45 days with a charted line. Would that solve the problem. Commissioner Timmons stated it's easy to say regardless of where you raced if you raced within 45 days and you show qualifying time then you'd be able to race the first day of racing in Maine. That's the easiest statement to make and it meets the rule. The rule says you must show a qualifying line within 45 days. If they raced at Bangor or they raced at Monticello what difference does it make if it's not over 45 days. It doesn't. What they've done was and they've done it in the past because it was very difficult to have enough horses ready to race when they opened. They said well let's look at what we could do to allow them to race and they made exceptions to the rule. We don't need to make exceptions to the rule if they go with 45 days. If we go with

45 days the only problem would be if Scarborough opened the box and they only had 45 horses they've made some exceptions. Commissioner McFarland stated he would say that they just follow the rule. It seems like based on the discussion if we follow the rule it would work. Commissioner Graham stated you're saying 45 days but are we modifying it because the rule says you may modify the requirement for the first 45 days of each racing season, so if we say if you race any time after October 26 you're eligible during the first 45 days of racing at Scarborough. Commissioner Timmons stated they could do that because it's in the rule we can change it. He was trying to get around the people in Bangor or someone else last year didn't need to get eliminated because they met the rule that we have. Commissioner McFarland asked Commissioner Graham to state that again. Commissioner Graham stated if you raced after October 26, 2018 you're eligible to race at Scarborough Downs during the first 45 days and after that you're not eligible. You'll have to qualify. Commissioner Graham made that a formal motion. Commissioner McFarland seconded. AAG, Guay stated and show a satisfactory charted line. Commissioner Timmons stated and show a satisfactory charted line. AAG, Guay stated that the rule says unless a horse qualifies 45 days prior to the event by charted line they have to qualify. Then the rule says that for the first 45 days of the racing season the Commission can modify that rule presumably because there's no racing for the horses to get the charted line. He thinks what they are doing is absolutely consistent with the rule, and he would also say to the extent that you're nailing the date down is even better and he thinks the motion does meet the rule. What you are doing is in Subsection 1 of section 6 which is modifying the 45-day rule but he wants to be clear that you're not modifying the qualification. People would still have to qualify but for the first 45 days this year. Commissioner Timmons asked for the vote. Vote 3-0.

Commissioner Timmons asked when racing starts at Scarborough Downs based on the testing program will that testing program continue the way it ended the last season knowing that we still have people outstanding from last year that have never been brought before us for positive tests. AAG, Guay stated that the department has prosecutorial discretion and there may be strategic reasons why they delay prosecution. If you press we could go over those on the record. Mr. Jennings asked AAG, Guay to the extent there is a legal question imbedded in his question is that appropriate for discussion under executive session. AAG, Guay stated to the extent that you would anticipate asking him for a legal opinion regarding either the responsibility of the department or the commission he would say yes. They could do an executive session then come back out and then decide. Mr. Jennings stated all they have is public comment so we could hold it.

## **5. Public Comment**

Catharine Damren stated to Mr. Jennings back a couple meetings ago you discussed maybe some assistant for the fairs. Did you ever finalize that for the tracks? Mr. Jennings stated he thinks they felt comfortable they are in a position to go forward with that. AAG, Guay stated there's been some discussion with certain parties in the industry about sort of how the Commission's budget is put together. To be honest as a result of the meeting and meeting with people, there were some good questions asked and then they did some research and they all concluded is frankly nobody has ever paid attention to the budget of the Commission. He hardly remembers this Commission actually voting out of this budget. The Commission has adopted a budget and there was some question as to whether any monies that would be used to promote activities at the fairs could be seen as somehow violating the legal structure of how the budget works and stuff; and the conclusion of the working group there were some accounting people from the department, a representative, a lawyer from another party; and essentially, where they ended up there was a lot of surprise in how the budget works. This isn't something where the harness racing commission can decide how it puts its budget together, but rather Title 5 describes what a budget looks like. The Commission has done that and it makes sense because the Department of Agriculture puts the budget together and the Commission votes on it. Based on that structure can the department make payments to the fairs. There was some question of are you disrupting the cascade meaning you're taking some money that would otherwise go to some people in the cascade, and giving it to other people that would get the money of the cascade. The working group the belief was yeah you can do that. Not that you could change the legislative cascade but you can give money to fairs just because they are somebody that gets money out of the cascade would not prevent them from getting money; for example, the entity that was raising the question themselves are the beneficiaries of spending by the department as well. The theory is if you are one of the people of the cascade you can't get any money out of the general budget, so the answer to the question is they all felt that it was ok to do it was

legal. One of the things they did learn is the Commission hasn't really paid a lot of attention to the line item details of the budget, and to the extent that he thinks that one of the request by one of the industry people in the future there's sort of a second and third level of documents that the accounting people do. That would be provided at the next meeting. Now whether anyone in the audience cares the information will be here. There has been sufficient money allocated in the budget to do it. The way it works is in July the Commission sets the budget. The department you can spend up to this amount of money and they have already done that, and the department thinks they would be able to give some promotional money to the fairs and still stay within that number that they were given. Ms. Damren asked if the percentage taken out of the fair money to operate the Commission is how much. Is that still 13 percent taken out of the money. Mr. Jennings stated yes. Ms. Damren asked if last year did that cover most of your operations so that none come out of the other funds the fund that went to the harness horsemen's and so forth. If she read the yearly report right, it was all taken out of the part that belongs to the fairs, is that right. Mr. Jennings stated if he understands her question the 13 percent is to pay the expenses of the fair coordinator that's Ms. Jordan. Ms. Damren asked if she could get a copy of the budget. Mr. Jennings stated that he would be put a copy in the mail to her. Ms. Damren stated that just so that they know the other parties that get some of this money are all contributing as much as the fairs contribute out of their portion. Mr. Jennings stated that he is happy to share all documents that they have. Ms. Damren stated that it looked to her like there was no equalization in any of it. It didn't equal. More money came from the fairs than came out of the other accounts. Mr. Jennings stated he would say not to his understanding. The 13 percent that she is talking about is from the handle. Correct. Ms. Damren stated probably but she kind of went through the figures that were in the annual report and it seems to her that the bigger percentage was taken out of the fairs have the lesser amount, but when you have several things that put money towards some comes from the handle. She remembers when this all happened years ago and she remembers various people got money from the cascade and she would like to see it. Mr. Jennings stated that this is public information. AAG, Guay stated to be clear that if he is there as the lawyer that there was a legal question. It wasn't a meeting. Mr. Jennings didn't call a meeting but rather someone legitimately just like you're raising questions; and if you want to raise a legal question and you want to have a meeting then he would be with Mr. Jennings at that meeting giving him legal advice. He just wanted to correct the record. They didn't have a meeting and did not invite you instead rather there was somebody that raised an issue about whether or not what was discussed at one of the meetings about giving money to the fairs was legal. We spend several months trying to understand that argument and then they came together and met, and he believes they headed off a legal challenge. Ms. Damren stated that the budget that the Harness Horsemen's submit they pay part of that too, so it's actually they pay for that and they dole it out. She's a little concerned about that. Mr. Jennings stated it comes from the purse accounts. AAG, Guay stated that he's going to suggest then that and this is one of the take away is its people for whatever reason he's not sure because the new focus on the cascade or whatever are paying attention now he's going to suggest that the time to pay attention is during the budget process and they all had a take away. Honestly people listened to the tape and he thinks there was all of two or three minutes on the budget and nobody in the audience asked questions. The horse is kind of out of the barn now and even if the Commission wanted to do something different the law says they shall do it every odd even number of year in August or something. Ms. Damren stated she just wanted to get up to date that's all.

William Kasabuski asked Mr. Jennings about the budget. When it comes to testing he's led to believe that the positives are dropping but he is led to believe that they changed companies that test. We had one in Kentucky and he wants the gentlemen who is calm to pick his brain he led him to believe that there were 10,000 items in a computer that no matter what we did here it would show up on the computer because there's 10,000 items in there. You give the horse peanut butter and it would show up horses eat peanut butter. He's led to believe that positives are down Mr. Kasabuski so obviously it's working. This new company that we're testing, is it the budget cheaper and that's why we grabbed them which is really affecting things because nothing's changed in the paddocks. Nothing has changed in the paddocks in that respect. It discourages the single horse owners from even breeding a horse let alone entering the horse. He's going to try to get this done again if we can take a horse out of service for a short period of time, so it doesn't really have to be retrained but yes requalified. It's going to slow that process down. What they do with the purses rule 179, rule 180 cancels it. In material. The horse should come out to penalize that stable, that owner, that trainer and slow it down even further. Can he get a copy of the budget to see just where the money goes? Mr. Jennings stated let's start by observing that LGC Laboratory got out of the business and

they did that because at \$125 a sample they couldn't even make money. It's not an easy arena to do business. They put out an RFP. They got three bids and the low bidder was the University of Illinois at Chicago. They still have a racing industry in Illinois. Any lab that was bidding had to have two certifications and one of them was RMTC. There's a special horse racing certification that a lab has to have and they have to demonstrate they are able to find the compounds of interests really. Now, if you think about it there is probably a thousand compounds that are out there they are on that ARCI list. The laboratories go back and forth over which ones they're going to target so they want to rotate. It's not that hard to figure out which ones are showing up. Anything that shows up is going to be on the boil. Then you take the other x number of hundreds of compounds and they have to rotate through and target different ones on different screenings. They charge \$75 per sample. Now the question you seemed to have is does that mean they're just not as good at it as ARCI. He doesn't have any compelling evidence to suggest that because they do find the steroids that show up the most along with the NSAIDs. They seem to be finding those. They have some different strategies to basically do what you call check samples to get samples in there to make sure they're finding what they should be finding. They will be checking their competency. It's a one-year contract with four potential options. It's a year to year contract. The other two labs that bid do the vast majority of the racing jurisdictions throughout the country but they charge considerable more. TC02 is something they are able to do and they're doing TC02 test. If you think about what's going on in the paddock that is diffidently key to them being able to do that. It's a cheap test. Their thought is they are going to gradually ramp that up. He also stated that they just recently changed the rule. It allows them to evaluate the data set which is a lot of these horses and trainer's get many tests over the course of the year. All of that data is there for them to look at and if they see a pattern the rule says now they can target any trainer for which a pattern is evident. Mr. Kasabuski stated that he came out of Corrections and if they had a serious enough case everything had to go into an evidence folder, and the continuity of evidence had to be followed and you had to sign for it and so forth and so on. He's seen this blood go from this girl's hand to that girl's hand to Mr. Canney's holding it now to the paddock judge is holding it for a second. How thorough is that when it comes to actual evidence. He's not questioning anyone in this chain that it's illegal here but how come we don't do that with that. Mr. Jennings stated that they absolutely do. There's a whole protocol and evidence tape goes on that tube as soon as the blood goes in there. And it's sealed. There is a complete record of every horse that got blood taken from it. Mr. Kasabuski stated that he's seen it and he's also lost track of that. Mr. Jennings stated that sheet goes in the box and goes to the lab. Mr. Kasabuski asked if there was one missing they'd know it. Mr. Jennings stated exactly.

Commissioner McFarland stated that yesterday the harness racing industry came out in full force March 6, 2019 to fight something that would have ended the harness racing industry LD 715 as it would have opened up the cascade and taken a lot of money and possibly taken most of the money out of the harness racing industry. He thanked Representative White who is a leading force and all of the members of the MSBOA, the MHHA, the owners, trainers, drivers and grooms, the OTB owners, and all of the agricultural fairs, and anyone who gave support and testimony yesterday at the legislature. It's your future and as a Commissioner he wanted to thank you for all coming out and doing what was right and hopefully we'll be able to move forward from this point.

Commissioner Graham asked last time they talked about what was happening with the State of Oregon and authorized AAG, Guay to go investigate that. AAG, Guay stated that he called and found his prior request. The person that he had sent the request to is off doing audits through March 8<sup>th</sup>. He sent them another email saying he apologized and perhaps he lost the file but could they resend it. He's being kind. He's assuming they sent it to the wrong address. He will finish their investigation here and then present that to the Commission. Our options at that point is fairly limited. Then the Commission would authorize him to go to the attorney general to get a letter written, but what we would intend to do as well is copy the Commissioner of Public Safety on that letter as well. There is hopefully they will submit the information if not then he would have to go to the attorney general and say we may need to have a more formal request. He has not received a response yet.

Commissioner Timmons stated that he is pleased with what Commissioner McFarland said because yesterday was very positive for everyone involved. As far as the industry is concerned and the information they started getting from the MHHA and their leadership and different stables from Cumberland to

Farmington to everywhere throughout the state. People that noticed they got informed, they were invited. Instead of going out jogging their horses and doing what they were doing, they made their way to Augusta. He stated that he is going to ask to if they would put a moratorium on that bill or on that process so we wouldn't need to hear from them again for five years.

Commissioner Graham made a motion they adjourn and then go into executive session. Commissioner McFarland seconded. Vote 3-0.

**6. Schedule of Future Meetings:**

April 19, 2019

May 17, 2019

**7. Adjourn**

10:50 a.m.